

character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The SHA shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

**§ 635.121 Contract time and contract time extensions.**

(a) The SHA should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a SHA shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

**§ 635.122 Participation in progress payments.**

(a) Federal funds will participate in the costs to the SHA of construction accomplished as the work progresses, based on a request for reimbursement submitted by State highway agencies. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the SHA; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the SHA determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

**§ 635.123 Determination and documentation of pay quantities.**

(a) The SHA shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.

**§ 635.124 Participation in contract claim awards and settlements.**

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed.